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 POWER MEDICAL INTERVENTIONS,  
 a Delaware corporation

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

MYRICK TANTIADO, an individual,

Plaintiff,

v.

POWER MEDICAL INTERVENTIONS, a  
 Pennsylvania corporation, and DOES ONE  
 through FIFTY, inclusive,

Defendants.

Case No. 07-2874-EDL

**DEFENDANT POWER MEDICAL  
 INTERVENTIONS, INC.'S ANSWER  
 TO COMPLAINT**

Defendant Power Medical Interventions, Inc. ("PMI") by and through its attorneys,  
 hereby answers the Complaint for Damages ("Complaint") of Myrick Tantiado ("Tantiado").

1. PMI is without knowledge or information sufficient to form a belief as to  
 the allegations in Paragraph 1 of the Complaint.

2. PMI denies the allegations in Paragraph 2 and further answers that PMI is  
 incorporated in the State of Delaware.

3. PMI is without knowledge or information sufficient to form a belief as to  
 the allegations in Paragraph 3.

4. PMI is without knowledge or information sufficient to form a belief as to  
 the allegations in Paragraph 4.

BART KOZANKEL  
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5. PMI incorporates its responses to Paragraph 1 through 4 of the Complaint as though fully set forth herein.

6. PMI admits that it sells products in the Northern District of California, that the Court has jurisdiction of this case, and it is without knowledge or information sufficient to form a belief as to the allegations of Paragraph 6.

7. PMI denies the allegations in Paragraph 7.

8. PMI denies the allegations in Paragraph 8.

9. PMI denies the allegations in Paragraph 9.

10. PMI denies the allegations in Paragraph 10.

11. PMI denies the allegations in Paragraph 11.

12. PMI denies the allegations in Paragraph 12.

13. PMI incorporates its responses to Paragraphs 1 through 12 of the Complaint as though fully set forth herein.

14. PMI denies the allegations in Paragraph 14.

15. PMI states that Paragraph 15 contains legal conclusions as to which no response is required; and otherwise denies the allegations of Paragraph 15.

16. PMI denies the allegations in Paragraph 16.

17. PMI denies the allegations in Paragraph 17.

18. PMI states that Paragraph 18 contains a demand for judgment as to which no response is required and otherwise denies the allegations of the paragraph.

19. PMI incorporates its responses to Paragraphs 1 through 18 of the Complaint as though fully set forth herein.

20. PMI denies the allegations in Paragraph 20.

21. PMI states that Paragraph 21 contains legal conclusions as to which no response is required; and otherwise denies the allegations of Paragraph 21.

22. PMI is without knowledge or information sufficient to form a belief as to the allegations in Paragraph 22.

23. PMI denies the allegations in Paragraph 23.

24. PMI states that Paragraph 24 contains legal conclusions as to which no response is required; and otherwise denies the allegations of Paragraph 24.

25. PMI states that Paragraph 25 contains matters as to which no response is required; and otherwise denies the allegations of Paragraph 25.

26. PMI states that Paragraph 26 contains a demand for judgment as to which no response is required and otherwise denies the allegations of the paragraph.

### **AFFIRMATIVE DEFENSES**

In further answer to the Complaint, PMI asserts the following affirmative defenses:

#### **FIRST AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claims fail to state a claim upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff is estopped by his own actions from asserting some or all of his claims.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred because Plaintiff was employed at all times on an at will basis and, as such, either party could terminate the employment relationship at any time for any reason with or without cause.

#### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state facts sufficiently to justify an award of punitive damages.

#### **FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by Plaintiff's failure to comply with employee obligations imposed under the California Labor Code.

WHEREFORE, the defendant Power Medical Interventions, Inc. respectfully requests that the Court dismiss plaintiff's Complaint for Damages, grant judgment to it on all

1 counts of the Complaint for Damages, award it attorneys' fees and costs incurred in defending this  
2 action, and grant such other relief as this Court deems just and proper.

3  
4 DATED: June 22, 2007

5 BARTKO, ZANKEL, TARRANT & MILLER  
6 A Professional Corporation

7  
8 By: 

William I. Edlund

Attorneys for Defendant

9 POWER MEDICAL INTERVENTIONS  
10 a Delaware Corporation

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